

COVENANT
TO RESTRICT USE OF PROPERTY
Located at
Christie Avenue and Shellmound Street
Emeryville, California

Recorded in Official Records, Alameda County
Patrick O'Connell, Clerk-Recorder

Recording Requested By:

46.00

95174319 10:50am 08/07/

Christie Avenue Partners - JS
100 Bush Street, 26th Floor
San Francisco, California 94104

005 517695 22 08 000250
A23 14 7.00 39.00 0.00 0.00 0.00 0.00 0.00

When Recorded, Mail To:

Barbara Cook, Chief
Site Mitigation Branch
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

This Covenant and Agreement ("Covenant") is made on the
25 day of ^{May} ~~March~~, 1995 by Christie Avenue Partners - JS
("Covenantor"), which is the owner of record of certain property
commonly known as the Emery Bay Marketplace located at Christie
Avenue and Shellmound Street, described in Exhibit "A" attached
hereto and incorporated herein by this reference ("Property"),
and by the California Department of Toxic Substances Control
("Department"), with reference to the following facts.

A. Description of Facts:

A.1. Past Waste Disposal. Historically, the Marketplace
site had been used for the manufacture of bituminous roofing
products (tar paper), blending and packaging of oil-based paints
and enamels, and as a trucking facility. Contamination of soil
and groundwater occurred under previous ownership and occupancy
through the routine storage and handling of materials related to
the fueling and industrial operations. The contaminants detected

1 in soil and/or groundwater during investigation activities
2 conducted between 1982 and 1987 include hydrocarbons, an asphalt-
3 like material and waste tar paper material. Pursuant to a
4 remediation plan submitted to the Alameda County Hazardous
5 Materials Unit in 1988, the hydrocarbon material was excavated,
6 treated and transported off-site for disposal. The trenches
7 which were left from these areas were refilled with clean fill.
8 The asphalt-like material was investigated and characterized.
9 The material contains semi-volatile petroleum constituents,
10 however, it was found to be non-hazardous pursuant to the
11 requirements of Title 22 of the Cal. Admin. Code. Some soil
12 containing such material was excavated and disposed of at an off-
13 site facility. However, some of this material remained in place
14 in areas which were covered by paved parking lots or 18"
15 landscaping material. The tar paper was removed and disposed at
16 an off-site landfill.

17
18 A.2. Potential Exposure Pathways and Health Risk. An
19 evaluation of the potential human health risk associated with
20 contaminants remaining at the site was performed prior to the
21 implementation of the final remedial action. This study found
22 that human exposure to the asphalt-like material remaining in the
23 soil at the Property is improbable because the site is covered
24 with buildings, landscaping and parking lots. As a result, the
25 study concluded that the asphalt-like material detected in the
26 soils at the site does not pose a human health hazard.

27 A.2.1. Covenantor has made full and voluntary
28 disclosure to the Department of the presence of the asphalt-like

1 material on the Property, and Covenantor has conducted extensive
2 investigation on the Property.

3 A.2.2. From an abundance of caution, Covenantor
4 desires and intends that in order to protect the public health
5 and safety there be a full disclosure of such materials left on
6 the Property, the locations thereof, and appropriate steps taken
7 to mitigate risk in the event that future activities on or uses
8 of the Property could lead to an exposure. Exhibit A provides a
9 map of the Property which identifies the known types and
10 locations of such materials under the ownership and control of
11 Covenantor.

12 A.2.3. Covenantor further intends and desires that
13 before any subsurface excavation is performed at any of the
14 locations reflected on Exhibit A that an appropriate site health
15 and safety plan be prepared to mitigate exposure, if any, to
16 materials located in such areas. Such site health and safety
17 plan shall be submitted to the Department for review and approval
18 at least five (5) days in advance of the subsurface work to be
19 conducted on the Property.

20
21 A.3. Deed Restriction Requirement.

22 A.3.1. The Department has determined that deed
23 restrictions need to be imposed on the Property to ensure full
24 protection of public health and the environment.

25 A.3.2. The Property is presently owned by the
26 Covenantor. The Property has been developed as a shopping
27 commercial center, which includes but is not limited to, retail
28

1 restaurants, food courts, movie theaters, entertainment, offices.
2 research and development, and related commercial purposes.

3 A.3.3. Covenantor agrees that in order to protect
4 the present and future public health and safety and the
5 environment, the Property shall be used in such a manner as to
6 avoid potential harm to persons or property which may potentially
7 result from any waste materials remaining on the Property,
8 although Covenantor has no reason to believe any such potential
9 exists.

10
11 ARTICLE I

12 GENERAL PROVISIONS

13 1.1. Provisions to Run With the Land. This Covenant sets
14 forth protective provisions, covenants, restrictions, and
15 conditions, (collectively referred to as "Restrictions"), upon
16 and subject to which the Property and relevant portions thereof
17 (dark bordered area on Exhibit "A") shall be improved, held,
18 used, occupied, leased, sold, hypothecated, encumbered, and/or
19 conveyed. Each and all of the Restrictions shall run with the
20 land, and pass with each and every portion of the Property, and
21 shall apply to and bind the respective successors in interest
22 thereof. Each and all of the Restrictions are imposed pursuant
23 to Section 25355.5 of the California Health and Safety Code and
24 run with the land pursuant to said Section 25355.5. Each and all
25 of the Restrictions are enforceable by the Department.

26
27 1.2. Concurrence of Owners Presumed. All purchasers,
28 lessees, or possessors of any relevant portion of the Property

1 shall be deemed by their purchase, leasing, or possession of such
2 Property, to be in accord with the foregoing and to agree for an
3 among themselves, their heirs, successors, and assignees, and their
4 agents, employees, and lessees of such owners, heirs, successors
5 and assignees, that the Restrictions as herein established must
6 be adhered to for the benefit of future owners and occupants and
7 that their interest in the Property shall be subject to the
8 Restrictions contained herein.

9
10 1.3. Incorporation Into Deeds and Leases. Covenantor
11 agrees that the Restrictions set out herein shall be incorporated
12 by reference in each and all deeds and leases of any portion of
13 the Property.

14
15 ARTICLE II

16 DEFINITIONS

17 2.1. Department. "Department" shall mean the California
18 State Department of Toxic Substances Control and shall include
19 its successor agencies, if any.

20
21 2.2. Improvements. "Improvements" shall mean all
22 buildings, structures, fixtures, roads, driveways, regradings,
23 and paved parking areas, constructed or placed upon any portion
24 of the Property.

25
26 2.3. Occupants. "Occupants" shall mean those persons
27 entitled by ownership, leasehold, or other legal relationship to
28

1 the exclusive right to occupy any relevant portion of the
2 Property.

3
4 2.4. Owner. "Owner" shall mean the Covenantor or its
5 successors in interest, including heirs and assigns who hold
6 title to all or any relevant portion of the Property.

7
8 ARTICLE III

9 RESTRICTIONS

10 3.1. Restrictions on Use. Covenantor and Owner agree to
11 restrict the use of the relevant portion of the Property as
12 follows:

13
14 3.1.1. The use of the Property (see Exhibit "A") is
15 restricted to the development, construction,
16 occupancy and maintenance of a shopping
17 commercial center, which includes but is not
18 limited to, retail restaurants, food courts,
19 movie theaters, entertainment, offices,
20 research and development, and related
21 commercial purposes.

22 3.1.2. The Property shall not be used in such a way
23 that will disturb or interfere with the
24 integrity of any monitoring system.

25 3.1.3. There shall not be any activity related to
26 residual waste materials on the Property
27 which will cause any potential harm to public
28 health or safety or the environment.

1 3.2. The relevant portion of the Property shall be used
2 and maintained in such a way as to prevent exposure to residual
3 waste materials left on-site.
4

5 3.3. The Department or its designated representatives
6 shall have access to the Property for the purposes of inspection
7 surveillance, monitoring or other actions necessary to protect
8 public health, safety or the environment.
9

10 3.4. Conveyance of Property. Covenantor and Owner shall
11 provide a thirty (30)-day advance notice to the Department of a
12 sale, or other conveyance of the Property or an interest in the
13 Property to a third person. The Department shall not have the
14 authority to approve, disapprove, or otherwise affect any sale,
15 lease, or other conveyance of the Property except as otherwise
16 provided by law or by reason of this Covenant.
17

18 3.5. Enforcement. Any violation of the Covenant shall be
19 grounds for the Department to take enforcement action, including
20 the filing of an administrative, civil or criminal action, as
21 provided by law, against the Covenantor or Owner, subject to all
22 applicable defenses.
23

24 3.6. Notice in Agreements. Covenantor, Owner and
25 Occupant shall prepare a written instrument which shall accompany
26 all purchase, lease, sublease, rental agreements, and other
27 conveyance documents relating to the relevant portion of the
28 Property. The instrument shall contain the following statement

1 "The land described herein contains waste material.
2 Such condition renders the land, the property, and the
3 owner, lessée, or other occupant of the land or
4 property subject to the requirements, restrictions,
5 provisions, and liabilities contained in Chapter 6.5
6 and Chapter 6.8 of Division 20 of the California Health
7 and Safety Code. This statement is not a declaration
8 that a hazard exists".
9

10 ARTICLE IV

11 VARIANCE AND REMOVAL OF RESTRICTIONS

12 4.1. Variance. Any Owner or, with the Owner's consent,
13 any Occupant of the Property or any portion thereof, may apply to
14 the Department for a written variance from any of the
15 Restrictions or requirements of this Covenant. Such application
16 shall be made in accordance with Section 25233 of the California
17 Health and Safety Code.
18

19 4.2. Removal of Restrictions. Any Owner or, with the
20 Owner's consent, any Occupant of the Property or a portion
21 thereof, may apply to the Department to remove any of the
22 Restrictions or requirements of this Covenant as they apply to
23 all or any portion of the Property. Such application shall be
24 made in accordance with Section 25234 of the California Health
25 and Safety Code.
26

27 4.3. Term. Unless modified or removed in accordance with
28 Section 4.1 or Section 4.2 above, the Restrictions and

1 requirements of this Covenant shall continue in effect in
2 perpetuity.

3
4 ARTICLE V

5 MISCELLANEOUS

6 5.1. No Dedication Intended. Nothing set forth herein
7 shall be construed to be a gift or dedication, or offer of a gift
8 or dedication, of the Property or any portion thereof, to the
9 general public for any purposes.

10
11 5.2. Notices. Whenever any person gives or serves any
12 notice, demand, or other communication with respect to this
13 Covenant, such notice, demand, or communication shall be in
14 writing and shall be sent simultaneously to an authorized
15 representative of the Covenantor (or Owner) and to the
16 Department, in certified mail with return receipt requested.

17
18 5.3. Partial Invalidity. If any portion of this Covenant
19 is determined to be invalid or unenforceable for any reason, the
20 remaining portion of this Covenant shall remain in full force and
21 effect.

22
23 5.4. Recordation. This Covenant shall be executed by the
24 Covenantor and by the Department. This Covenant shall be
25 recorded by the Covenantor in the Alameda County Recorder's
26 Office within ten (10) days of the date of execution as set forth
27 above.
28

1 IN WITNESS THEREOF, the Covenantor and the Department
2 execute this Covenant as of the date set forth above.

3
4 "Covenantor"

5
6 Christie Avenue Partners - JS

7
8 Christie Avenue Partners - JS
9 A California Limited Partnership

10 By: 64th Street Associates
11 A California Limited Partnership

12
13 By: [Signature]
14 Its General Partner

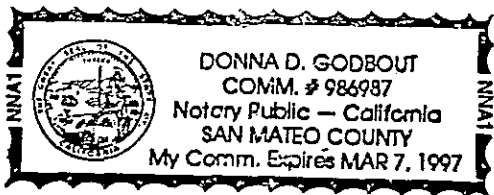
15 By: [Signature]
16 Its General Partner

17 "Department"

18 Barbara J Cook
19 Barbara Cook, Chief
20 Site Mitigation Branch
21 Department of Toxic Substances Control
22
23
24
25
26
27
28

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENTState of CaliforniaCounty of San FranciscoOn March 2, 1995 before me, Donna D. Godbout, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared J. David Martin
Name(s) of Signer(s)

☒ personally known to me — OR — ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Donna D. Godbout
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached DocumentTitle or Type of Document: Covenant to Restrict Use of PropertyDocument Date: March, 1995 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)Signer's Name: J. David Martin

- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☒ Partner — ☐ Limited ☒ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

**RIGHT THUMBPRINT
OF SIGNER**
Top of thumb here

Signer Is Representing:

64th Street Associates

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

**RIGHT THUMBPRINT
OF SIGNER**
Top of thumb here

Signer Is Representing:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

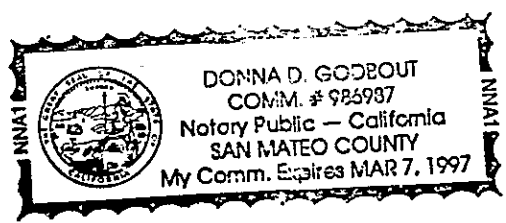
State of California

County of San Francisco

On March 2, 1995 before me, Donna D. Godbout, Notary Public

personally appeared Thomas J. Gram

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Donna D. Godbout
Signature of Notary Public

OPTIONAL

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Description of Attached Document

Title or Type of Document: Covenant to Restrict Use of Property

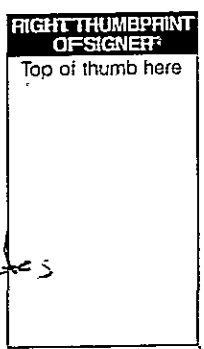
Document Date: March 1995 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Thomas J. Gram

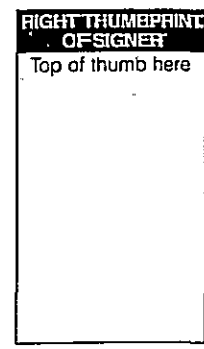
- ☐ Individual
- ☐ Corporate Officer
- Title(s): _____
- ☒ Partner — ☐ Limited ☒ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____



Signer Is Representing: GCH Street Associates

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer
- Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____



Signer Is Representing: _____

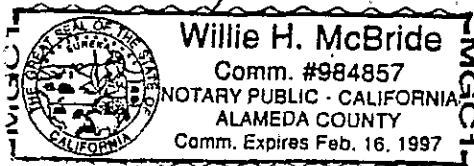
1 STATE OF CALIFORNIA)
2)
3 COUNTY OF Alameda)

4 On MAY 25, 1995, before me, WILLIE H. McBRIDE,

5 a Notary Public in and for said state, personally appeared Barbara
6 J. Cook, personally known to me or proved to me on the basis of
7 satisfactory evidence to be the person whose name is subscribed to
8 the within instrument and acknowledged to me that she executed the
9 same in her authorized capacity, and that by her signature on the
10 instrument Department of Toxic Substance Control executed the
11 instrument.

12
13 WITNESS my hand and official seal.

14
15 Signature Willie H. McBride



★ WASTE CHARACTERIZATION
SAMPLING LOCATION

■ TEST PIT

⊕ EARTH METRICS BORINGS

● PREVIOUS BORINGS (WCC)

W REFERS TO A WELL

□ OIL AND GREASE
CONCENTRATION IN SOIL (PPM)

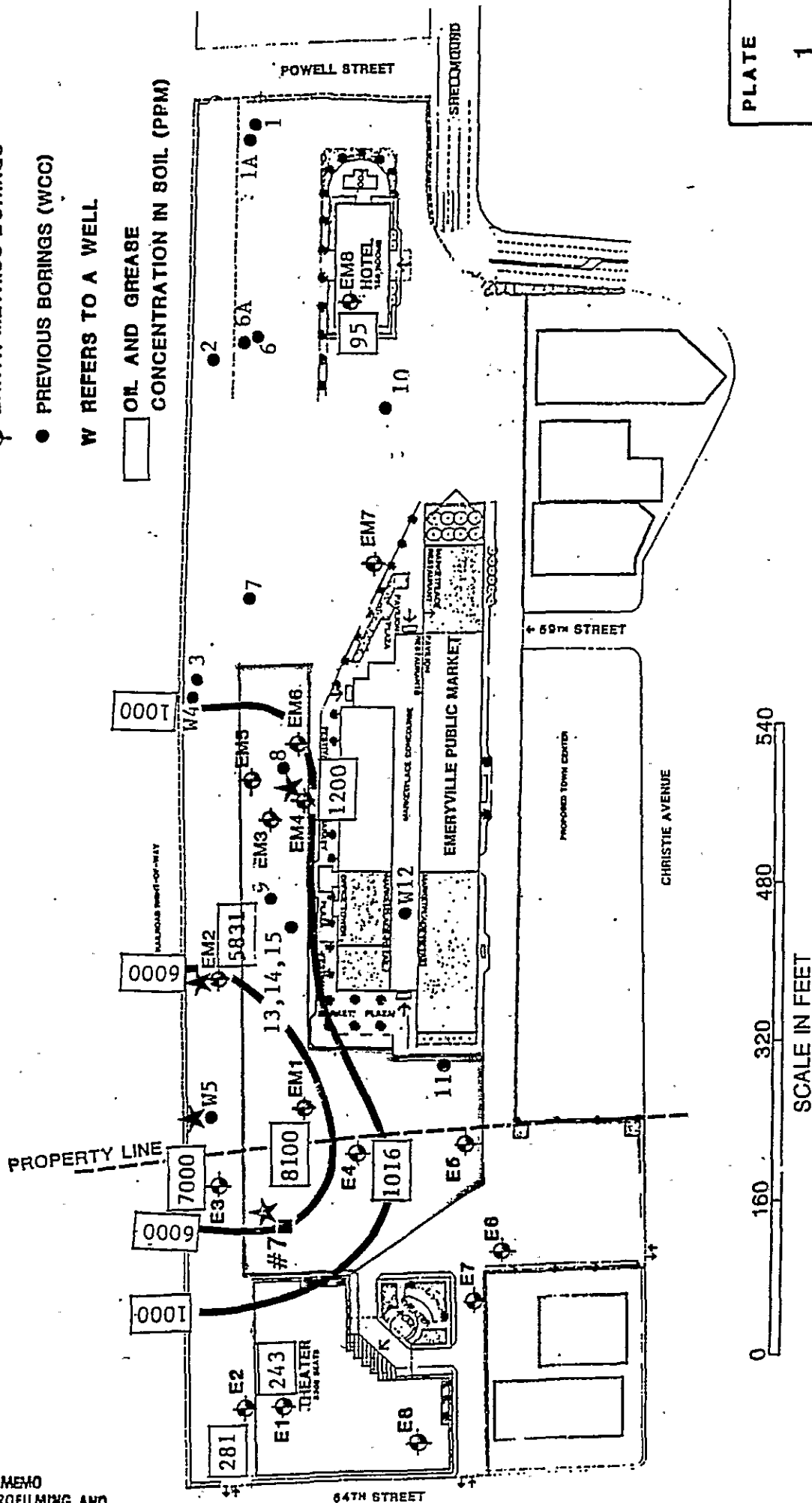


PLATE
1

THE MARTIN COMPANY

JOB NUMBER

DATE

PLATE

WASTE CHARACTERIZATION
SAMPLING LOCATION

Aqua Terra Technologies
Consulting Engineers
& Scientists

ATT

Source: Earth Metrics March 11, 1988

RECORDERS MEMO

LEGIBILITY FOR MICROFILMING AND
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